

Appl. No. 10/776,048
Amdt. Dated 01/06/05
Reply to Office Action of 10/06/05

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. Claims 4, 9 and 14 have been amended to change the word "dispose" to "disposed." Applicant respectfully submits that the arrows of applicant's FIG. 2 correctly illustrate the doors pivoting back upwardly and that such movement would be obvious to one having ordinary skill in the art.

The examiner has rejected claims 1-3, 6, 7, 8, 11, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,725,661 to Bowman in view of U.S. Patent No. 1,630,798 to Morelli. In order to establish a prima facie case of obviousness under 35 U.S.C. § 103 (a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

The examiner alleges Bowman discloses a plurality of trap doors that will pivot downwardly about the outer end portions thereof when rodents enter the trap and thereafter pivot upwardly to a resting position after rodents enter the cavity, as recited in applicant's claims 2, 7, and 12. The examiner further asserts that the Bowman's doors pivot upwardly after pivoting downwardly due to the rebound from the impact with the end portions of the cage. Applicant respectfully submits the trap doors of Bowman pivot upwardly to a tensed or "set" position to set the trap and pivot downwardly after rodents enter the trap to a rest position. After Bowman's alleged upwardly movement from the rebound of the impact, the doors of Bowman would then pivot downwardly to a rest position. Such doors of Bowman cannot pivot upwardly to a resting position. The weight of the rodents causes the trap doors of the present invention to pivot downwardly and then such doors pivot upwardly automatically after rodents enter the cavity. As a result, Bowman does not teach all of applicant's claimed invention.

The examiner acknowledges Bowman does not disclose a top surface having an aperture formed therein for defining a path through which bait may be deposited into

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said cage and a bottom surface including a door pivotally attached to the cage for allowing a user access to rodents, as recited in applicant's independent claims 1, 7, and 12. However, the examiner states it would have been obvious for one having ordinary skill in the art to combine the top openings 20, 21 and bottom openings 15, 16 of Morelli with Bowman to teach applicant's claimed invention. Applicant submits the bait in Bowman is "tied or otherwise secured to the lower leg of the trigger" (see Bowman col.2, lines 3-4). Because the trigger 10 of Bowman "extends loosely through one of the interstices of the wire body of the cage (see Bowman col 2, lines 2-3), a user is able to remove the trigger from the cage prior to setting the trap and tie bait to it. As a result, an aperture for depositing bait into the cage is not necessary. Therefore, Bowman teaches away from applicant's claimed invention and it is improper to combine references where the reference teaches away from their combination. References that teach away from the claimed invention lack the necessary motivation to combine, and thus, one of ordinary skill in the art would not make such a combination. M.P.E.P. § 2145; *In re Grasselli*, 713 E. 2d 731, 743 (Fed. Cir. 1983). Therefore, there is no suggestion or motivation in Bowman to include an aperture in the top surface for defining a path through which bait may be deposited. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

Applicant further submits the latches 13 of Bowman are intentionally disengaged from the lugs 70a to permit the doors to be swung open for the removal of the trapped animal and/or resetting of the trap (See Bowman col. 2, lines 46-50 and FIG. 2). As a result, Bowman teaches away from applicant's claimed invention and it is improper to combine references where the reference teaches away from their combination. References that teach away from the claimed invention lack the necessary motivation to combine, and thus, one of ordinary skill in the art would not make such a combination. M.P.E.P. § 2145; *In re Grasselli*, 713 E. 2d 731, 743 (Fed. Cir. 1983). There is no suggestion or motivation in Bowman for a door pivotally attached to the bottom surface

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for removing trapped rodents, as recited in applicant's independent claims 1, 7, and 12, because the rodents of Bowman can be removed via the same path and out the same door through which they entered the trap. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

The examiner has rejected claims 4, 5, 9, 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,725,661 to Bowman in view of U.S. Patent No. 1,630,798 to Morelli and further in view of U.S. Patent No. 2,584,498 to Posey. The examiner acknowledges Bowman as modified by Morelli does not disclose a cavity disposed below the entrance path of the rodents so rodents cannot escape after entering, as recited in applicant's claims 4, 9, and 14. However, the examiner asserts it would have been obvious to one having ordinary skill in the art to combine the cavity of Posey with the trap of Bowman as modified by Morelli to teach applicant's claimed invention. Applicant submits the trap doors of Bowman are positively locked by the latches 13, preventing rodents from escaping (See Bowman col. 2, lines 42-47, and FIG.2). Therefore, Bowman teaches away from applicant's claimed invention and it is improper to combine references where the reference teaches away from their combination. References that teach away from the claimed invention lack the necessary motivation to combine, and thus, one of ordinary skill in the art would not make such a combination. M.P.E.P. § 2145; *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). As a result, there is no suggestion or motivation in Bowman as modified by Morelli for a cavity disposed below the entrance path for retaining trapped rodents. That a prior art reference could be modified to form the claimed structure does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the above

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arguments. Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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By


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